IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2197 of 2004
With
CRIMINAL APPEAL No. 2199 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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DALSUKHBHAI SAVJIBHAI PATEL POLICE SUB INSPECTOR - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR BM MANGUKIYA for Appellant(s) : 1,MS BELA A PRAJAPATI for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Respondent-State.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 28/02/2007

COMMON CAV JUDGMENT

1. The appellant of Criminal Appeal No.2197 of 2001, who is the orig.accused no.1; and appellant of Criminal Appeal No.2199 of 2001,

who is the orig.accused no.2 (hereinafter referred to as 'the accused') have filed these appeals respectively against the judgment and order of conviction and sentence dated 18th December, 2004, passed by the learned Special Judge (Prevention of Corruption Act) and Additional Sessions Judge, Fast Track Court No.5, Veraval, in Special (ACB) Case No.1 of 2001 (Old Case No.11 of 1999). The accused have assailed the legality and validity of the judgment and order of conviction and sentence under challenge whereby the accused persons have been held guilty for the charge of offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and they have been sentenced to undergo rigorous imprisonment for 3½ years on each count and also ordered to pay a fine of Rs.5000/- for each offence; and in default of making payment of fine, further imprisonment of nine months for each offence.

2. The accused no.1 was the Police Sub-Inspector of Talala Police Station and the accused no.2

was the Police Constable in the same Police Station. As both these appeals are arising out of the same judgment and order of conviction and sentence, the same are decided by present common CAV judgment. According to Shri Mangukiya, learned counsel appearing for the both the accused, there is no conflict of interest or even conflict of defence, and even both the accused were defended by the separate advocates before the trial Court. According to Shri Mangukiya, no prejudice is likely to be caused to any of the accused persons and, therefore, he may be heard on behalf of both the accused persons. Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the respondent-State, after some deliberations, had agreed and he has also submitted that both the appeals can be disposed of by a common judgment. Therefore, the present appeals are being decided by the present common CAV judgment.

3. The brief facts placed by the prosecution before the trial Court reveal that the accused allegedly demanded an amount of Rs.200/- as

regular instalment for plying a three wheeler motor vehicle which is normally used for carrying goods and popularly known as “Chhakdo Rickshaw” (hereinafter referred to as 'the rickshaw'). Though this rickshaw is basically a goods' carrier, it was being plied to transport the passengers. The accused being the Police personnel were recovering the amount of Rs.200/- per month as regular instalment from the orig.complainant-Devendra Naranbhai Parmar, resident of Chitrod, for permitting him to ply the rickshaw as passenger vehicle. That on 12th April, 1999, the accused no.1 had directed the orig.complainant to make payment of instalment for the month of April, 1999, which was not paid by him, to any Police Constable on duty standing on the road on the next day i.e. 13th April, 1999, if at the relevant point of time the accused no.1 is not available at Talala or otherwise. The FIR Ex.25 is the narration of the first part of the facts of the case placed by the prosecution; and it is alleged that on 12th April, 1999, the orig.complainant-Devendra Naranbhai Parmar, resident of village Chitrod

(Gir), Taluka Talala, was proceeding towards Talala from his village Chitrod. The Police Jeep Car of the accused no.1 was also moving in the same direction and it was behind the rickshaw of the orig.complainant. When the complainant was about five kilometres away from the town Talala, the Police Jeep Car intercepted the rickshaw of the complainant and the complainant was given a signal to stop his rickshaw and therefore, the complainant stopped his rickshaw. The accused no.1 came out of the Jeep Car and started abusing the complainant and also pulled out the complainant from the driver seat and asked him whether he has paid the instalment of Rs.200/- of that very month. The complainant responded that as he had spent some amount in getting the engine of his rickshaw repaired, he could not pay the same. The accused no.1 in response to that told him that such an excuse would not do and the complainant will have to pay the instalment timely. The complainant thereafter requested to grant him two to four days time, so that he can make arrangement. At that time, the accused no.1 had turned wild and the

complainant was beaten with kick and fist blows by the accused no.1; and he was asked to pay the instalment of that very month on the next day i.e. on 13th April, 1999, at the place near J.B. Guest House. The complainant was usually parking his rickshaw near J.B. Guest House of town Talala. So the complainant was asked to pay the said amount at that place, and it was also directed by the accused no.1 to the complainant that if any Police Constable of Talala Police Station may come there, then the complainant should pay the amount of Rs.200/- to that Police Constable, otherwise the complainant would not be able to ply his rickshaw. The complainant was also informed by the accused no.1 that on 13th April, 1999, at any time between 09-00 a.m. and 12-00 p.m., the Police Constable would come to collect the amount of instalment and he should pay the same. At that time, one Police Constable who was in the Jeep Car had come there and a signature of the complainant was obtained on one form. Thereafter, the accused no.1 had proceeded towards Talala. It is the say of the complainant that from that

spot, he had returned to his village Chitrod and by putting his rickshaw at his residence, he had reached to Rajkot for filing a complaint. According to the complainant, though he is not willing to pay the said amount, he is being compelled to pay the same. This complaint was registered by Anti-Corruption Bureau (ACB), Rajkot at about 21-00 hrs. on 12th April, 1999. Thereafter, the ACB trap was arranged on 13th April, 1999 and according to the prosecution, on 13th April, 1999, the raiding party personnel along with the complainant and the panchas had reached to Talala from Rajkot. The complainant and the panch-witnesses were waiting, keeping rickshaw on stand, for arrival of Police Constable as asked by the accused no.1. They were on rickshaw stand since 10-00 a.m. in the morning but at about 10-20 a.m., one Police Constable (accused no.2), who was standing near the shop of Jalaram Cold Drink, had blown the whistle and by raising his hand called the complainant. The complainant thereafter in the company of Panch no.1 proceeded towards the accused no.2 in the rickshaw. He was addressed

as 'Giribapu' by the complainant. There was some conversation between the accused no.2 and the complainant about the ill-treatment given by the accused no.1 to the complainant on previous day. At that time, the said person, meaning thereby, the accused no.2 asked him whether he has brought the instalment money and if he has brought then he should pay the same. At that time, the complainant took out the muddamal currency notes smeared with anthracene powder and handed over to the accused no.2. The accused no.2 accepted the same and put the said amount in his right side pant pocket. On acceptance of the bribe amount by the accused no.2, a signal was given and the accused no.2 was caught in presence of both the panchas at about 10-30 a.m. Thereafter, the Police Inspector Shri Mahida took the accused no.2-Police Constable after knowing his name and buckle number to the Guest House. According to the prosecution, as it was a public place and people had started gathering there at the spot, the accused no.2 was taken to District Panchayat Guest House in the Government vehicle namely the Jeep Car of

ACB Police Inspector Shri Mahida. In the District Panchayat Guest House, the experiment under the ultraviolet lamp on the various articles and hands of the accused no.2 was made and a detailed panchnama was drawn. The muddamal currency notes were also recovered from the accused no.2.

4. After completing the formalities of the raid, the papers were handed over to the concerned ACB Police Station. On completion of the investigation and receipt of the sanction from the competent authority, the Police chargesheeted both the accused persons.

5. The charge is at Ex.21. Shri B.M. Mangukiya, learned counsel appearing for the accused persons, has taken me through the oral as well as documentary evidence led during the course of trial and also the judgment and order of conviction and sentence under challenge. He has also read the depositions of all the important witnesses namely the complainant; Panch No.1 and Police Inspector Shri Mahida. He has drawn the attention of the Court to the

various infirmities in the investigation as well as commented on the approach of the Court even pending trial. One of the grievances of Shri Mangukiya before this Court is that the accused have neither received any fair treatment by the Investigating Agency nor by the learned Presiding Judge of the Court who conducted the trial. There are speaking circumstances to show that both the accused persons have been falsely implicated in a serious offence and the Investigating Officer has tried to save the accused no.2, who has actually accepted the amount from the complainant in the alleged incident as the said accused no.2 was of the same caste of the raiding officer Shri Mahida.

6. Shri A.J. Desai, learned Additional Public Prosecutor, has resisted the submissions made by Shri B.M.Mangukiya in detail and according to Shri Desai, the finding recorded by the learned trial Judge cannot be said to be either perverse or illegal and, therefore, the same should be upheld by dismissing the appeal.

7. I have considered the oral evidence of the following witnesses :

(i) Complainant-Devendra Naranbhai Parmar, PW-1, Ex.24.

(ii) Hasmukhbhai Kanjibhai Patel, Panch No.1, PW-2, Ex.26.

(iii) Kanakrai Shamjibhai Shingala, Panch No.2, PW-3, Ex.30.

(iv) Dr.Tejas Jethabhai Vegda, PW-4, Ex.47, who is examined to prove the injury on the body of the complainant.

(v) Vijaykumar Tuljaram Navle, PW-5, Ex.50, ACB Police Inspector, Amreli, who was handed over the investigation of the crime registered with ACB Police Station vide C.R.No.5/1999 from the Police Inspector Shri F.S. Mahida, ACB Field, Rajkot, who had recorded the statement of Panch No.1-Hasmukhbhai Kanjibhai and Panch No.2-Kanakrai Shamjibhai Shingala, and so also further statement of the

complainant along with the statement of the Members of the raiding party.

(vi) Kishorsinh Jorubha Gohil, PW-6, Ex.51, who took over the investigation and papers of investigation from Police Inspector Shri Navle and chargesheeted the accused persons on receipt of the sanction from the competent authority to prosecute both the accused persons as Police Inspector ACB, Amreli.

8. The evidence of the above witnesses obviously has been read in context of the documents produced during the course of trial and the explanation given by the accused persons under Section 313 of the Code of Criminal Procedure, 1973, mainly the complaint Ex.25, panchnama of ACB Trap Ex.28 and the documents of Talala Police Station including the extract of Talala Police Station diary of 11th April, 1999, 12th April, 1999 and 13th April, 1999. The other important document i.e. extract from NC Register from Talala Police Station and Duty Distribution Register from 11th to 13th April,

1999 at Exhs.37 and 38 are also considered.

9. It is submitted by Shri Mangukiya that this is the case where the learned trial Judge has convicted the accused persons wherein neither a very important witness namely the trapping officer Shri Mahida nor any Police officials of Rajkot Police who had accompanied Shri Mahida along with both the panchas could be examined. This has resulted into serious prejudice and the learned trial Judge has not insisted for examination of these witnesses, at least one of the persons of the raiding party ought to have been examined. The learned trial Judge ought to have called Shri Mahida, Police Inspector ACB Police Station. Non-examination of Shri Mahida has resulted into serious prejudice to the accused because it is one of the defences that Shri Mahida had replaced the accused no.2 vice one another Police Constable, who was of Darbar Community and of the very community of the trapping officer Shri Mahida. According to Shri Mangukiya, learned counsel appearing for the accused persons, there is ample evidence on

record to show that the complainant was inimical to accused no.1. The complainant was the President of Chhakdo Rickshaw Drivers' and Owners' Association and he was out to trap the accused no.1 because the accused no.1 was strict and he was against plying of goods carrier vehicles in transporting the passengers in the nearby area of town Talala. The complainant himself has accepted that he was hackled by the accused no.1 for carrying passengers in a goods carrier vehicle on 12th April, 1999 and a Criminal Case was also registered. So the complainant had took up the issue as the accused no.1 had ignored the status of the complainant as President of the said Association while prosecuting him on 12th April, 1999. Therefore, the complainant got arranged the trap even by approaching the ACB Office at Rajkot. Junagadh has ACB Police Station and if the officer competent to lay down a trap is not there in the Police Station, then he could have received the guidance from Junagadh ACB Police Station and a complaint could have been lodged with the officer in-charge of Junagadh Police Station.

But for the reasons best known to the complainant, he had reached to Rajkot on 12th April, 1999 itself and with the help of Police Inspector Shri Mahida created a case and the accused no.1 has been implicated falsely in such a serious offence.

10. Shri B.M. Mangukiya, learned counsel appearing for the accused persons, has drawn the attention of the Court to certain infirmities emerging from the evidence of the complainant as well as both the panchas examined because these three witnesses were the only persons competent to lead evidence to link the accused persons with the crime, especially when Shri Mahida could not be examined. He has submitted that there is no convincing evidence to link the accused no.1 with the crime and there is a great shadow of doubt as to the involvement of the accused no.2 vice original acceptor of muddamal currency notes from the complainant. The complainant was not interested in prosecuting any Police Constable of Talala Police Station. His main goal was the accused no.1. Therefore, he has conveniently supported

the wrong committed by Shri Mahida, Police Inspector ACB Police Station, in let-going the main person, who had allegedly accepted the muddamal currency notes and substituting the accused no.2. The learned trial Judge while recording the finding against the accused persons has ignored the material contradictions and omissions and certain improvements made by these three witnesses mainly the complainant, and it is submitted that thus, the judgment and order of conviction and sentence under challenge is based on illegal and irrational assumptions and conjectures.

11. It emerges from the evidence of the complainant-Devendra N. Parmar-PW-1, that he had some acquaintance with the Talala Police Station and also with the accused no.1 being Police Sub-Inspector of the Talala Police Station. It is not a matter of dispute that the complainant was plying the rickshaw for carrying passengers in violation of the Motor Vehicles Act at the risk and costs of the passengers travelling in such vehicles. This

witness has even attempted to show ignorance in describing the Non-Cognizable (NC offence) Book which is being kept by the Traffic Police. The complainant was of 40 years of age and according to him, rickshaw driving is his profession. He has not even fairly admitted that the NC was registered against him on 12th April, 1999 at the instance of the accused no.1. It is not his say that the accused no.2 was also there in the said Jeep Car of the accused no.1. No harsh steps were taken at that point of time. It is likely that he may have been insulted or hackled by the accused no.1 or any other police personnel sitting in the Police Jeep Car. The complainant has not narrated the time as to at what point of time his rickshaw was actually intercepted. It is the say of the complainant that it was afternoon when he was proceeding towards Talala from his native village Chitrod and the conversation had taken place about the alleged non-payment of monthly instalment for plying goods carrier to carry passengers at the time when he was intercepted and stopped by accused no.1. When the NC was registered, neither the

complainant nor the accused no.1 was aware that the said incident may take shape of a complaint under the provisions of the Act. In that background, the time of the NC registered for the offence punishable under Sections 66(1), 177 and 66(1) and 192 of the Motor Vehicles Act, is required to be taken into consideration. As per the document Ex.41, the NC complaint was registered at Serial No.52/99 in the Register of Talala Police Station MVA Register (NC offences). On 13th April, 1999, at 09-10 a.m., the accused no.1 had registered one such NC against one Harsukh Bogha Khant of village Bhalcchel for similar offence. He was also found with passengers in the goods carrier and was also not having licence for the same. The similar offence was registered against the complainant PW-Devendra Parmar at 09-15 a.m. on the same road i.e. Talala to Sasan Road. There is no controversy as to the number of motor vehicle driven by the complainant, even then the complainant has narrated that he was stopped and hackled by the accused no.1; and an NC case was also registered against him at that point of time.

According to the complainant, his signature was obtained in a book and he had signed in the book without reading the same as he is illiterate. He has stated that it was something like book wherein he had signed. When the say of the complainant is that the demand of Rs.200/- towards unpaid monthly instalment was made at that time, meaning thereby, in the afternoon, then why the time reflected in the NC does not corroborate with the version of the complainant, is the question which was required to be answered by the prosecution satisfactorily. According to Shri Mangukiya, absence of such explanation makes the entire narration of the incident allegedly occurred in the afternoon on 12th April, 1999, doubtful. It is neither proved nor it is possible to infer that the accused no.1 could have registered the NC ante-time after the raid because the raid was carried out on the next day i.e. on 13th April, 1999. On the contrary, it is clear that the accused no.1 was present in the Police Station between 07-30 a.m. and 08-00 a.m. and after recording the presence of the persons, he had left the

Police Station by handing over the charge of the Police Station to one Police Constable Shri B.S. Jalani at 08-15 a.m. When the complainant was proceeding towards Talala to park his rickshaw on the bus-stand carrying passengers, what happened to those passengers, is again a question. Who was found in the said rickshaw at 09-15 a.m., is also another question. It is neither the say of the prosecution nor the complainant that the complainant was prosecuted initially in the morning at 09-15 a.m. and thereafter, again he was stopped in the afternoon and at that time, again the signature was obtained in the book. When an NC registered against the complainant is admitted by the prosecution and impliedly by the complainant, then the time of registration of the offence should not be viewed with doubt and if the same is contrary to the story told by the complainant, then that part of the evidence of the complainant ought not to have been considered as reliable piece of evidence. So the evidence of the complainant as to the initial demand of Rs.200/- made on 12th April, 1999 by stopping

the complainant on the road, is a doubtful piece of evidence. It was possible for the complainant to name at least one of the passengers to corroborate his say and such a passenger could have been examined by the prosecution to corroborate the incident allegedly occurred in the afternoon on 12th April, 1999 when the initial demand of Rs.200/- was made by the accused no.1 and thereafter, he was beaten up by the accused no.1 and then the accused no.1 registered the NC offence against the complainant. It appears that the complainant has not cared to disclose the names of the passengers when he was proceeding towards Talala from his native Chitrod. It was not impossible for him at least to name one of the passengers. It is difficult for this Court to even think that all the passengers were unknown to the complainant. He has admitted that he was carrying passengers in a goods' carrier rickshaw regularly and was paying an amount of Rs.200/- per month for plying the same illegally for transporting passengers. He was paying the said amount to the Police Constable

of Talala Police Station. The town Talala is having 4 to 5 rickshaw stands. According to me, when the complainant was stopped, there was no passenger in the rickshaw and if the engine of the rickshaw was overhauled and totally repaired, then one cannot ply such rickshaw by loading the passengers but the NC registered by the Police speaks contrary. According to the complainant, he had started from his native Chitrod at about 11-00 a.m. and has denied the suggestion that he had started at about 09-00 a.m. and at that time, the accused no.1 had intercepted him and prosecuted him. He has also denied that he was not carrying the licence with him at that point of time and there were passengers in the rickshaw. On the contrary, he has accepted the suggestion in the cross-examination that an NC was registered against him, but it was registered in the afternoon. He has also denied that he was asked to appear in the Court on 21st April, 1999. He has accepted that earlier he has been prosecuted for violation of Traffic Rules and on all the occasions he was informed about the date of appearance in

the Court. He has also admitted that he had not gone to the Court in the said case registered by the accused no.1. A lame excuse has been given by this witness that as the accused no.1 had asked him not to enter into town Talala, he had returned to his native village Chitrod. This excuse or explanation is found unconvincing because if he had really returned to village Chitrod immediately after registration of the NC under the alleged threat, then what happened to the passengers who were there in the rickshaw because the rickshaw was stopped at a distance of about 5 kms. from town Talala. He has admitted in paragraph no.7 of his deposition that he had decided to lodge a complaint when he was beaten up by the accused no.1. Of course, he has denied that he has not taken any advice of his brother Nathabhai or any other person before deciding to file a complaint with ACB Police Station. However,he has admitted that his brother Nathabhai had filed one such complaint with ACB Police Station against the Police Head Constable Khengar Dana of Sasan Police Station and in that case, the said

Khengar Dana was acquitted by the concerned Court. The another brother of the complainant namely Pravinbhai, who is a photographer, is residing at Talala and he had also filed one complaint with ACB Police Station against the Secretary of Village Panchayat of village Aankolvadi of Taluka Talala. However, the complainant has deposed that he had no experience regarding lodging of a complaint with the ACB Police Station. According to Shri Mangukiya, the learned trial Judge ought to have either accepted the version of this complainant on the point of initial demand of Rs.200/- made by the accused no.1 or the mode of payment. The learned trial Judge has ignored a very material contradiction whereby the complainant has narrated the incident of demand and acceptance of bribe amount at Talala on 13th April, 1999. According to the complainant, when he was caught by the Police, he had gone towards the accused no.2 and the panch No.1 was accompanying him but has not stated about the distance between him and the panch No.1. Undisputedly, it was a public place and number of persons were able to see

and possibly hear the conversation. It is not the say of the complainant that his only rickshaw was on the bus-stand and no other rickshaw driver was there with his rickshaw. On asking the amount of Rs.200/- by the accused no.2 which was kept as bribe amount in his pocket by the complainant, the same was handed over to the accused no.2 by the complainant. The accused no.2 had put on T-Shirt and the amount was kept in the pocket of the T-Shirt as alleged. It is in evidence that the accused no.2 had put on T-Shirt having pocket on the leftside. That immediately after the accused no.2 put the amount in the pocket of the T-Shirt, the complainant had given signal, is the say of the complainant in his Examination-In-Chief in paragraph no.3. In paragraph no.4, while describing the experiment with the ultraviolet lamp, he has continued with the version that the amount was kept in the pocket of the T-Shirt and the anthracene powder was found on the edge of the pocket. However, the Public Prosecutor had shown one pant recovered as muddamal. When the pant was shown to the complainant, he had

immediately corrected himself and by making material improvements in his version, stated that “though he has said that the amount was put in the pocket of the T-Shirt, in reality, the amount was put in the pant pocket”. At that point of time also, he has not stated about the side of the pocket, whether it was right side or left side of the pocket. It is in evidence that the person belonging to Bavaji community are addressed as 'Bapu'; in the same way, 'Rajputs' and 'Darbars' in Saurashtra region are also addressed as 'Bapu'. According to Shri Mangukiya, learned counsel appearing for the accused persons, the person who accepted the amount even as per the complainant was addressed as 'Bapu' and as such there was no recovery of the amount from the accused no.1. According to Shri Mangukiya, one Police Constable of Talala Police Station, who is Raput/Darbar had accepted the amount. But thereafter, the amount was conveniently thrown by him when he was being taken towards the District Panchayat Guest House and the accused no.2 was asked to collect the said amount immediately from the earth where they

were thrown by the original acceptor and after that Shri Mahida, Police Inspector of ACB Police Station on disclosure of the identity of the said Police Constable as his caste fellow, substituted the accused no.2. The accused no.1 was not even present in the town Talala. There was no evidence on record to show as to when the accused no.2 was instructed to recover the instalment of Rs.200/- from the complainant. When it is the say of the complainant himself that he was paying monthly instalment to the Police Constable for plying rickshaw illegally, then why the accused no.1 was linked with the wrong allegedly committed by the accused no.2. As the complainant was paying the amount of bribe regularly every month, he would have paid the said amount for his convenience to any of the Police Constables on duty near J.B. Guest House. His attempt to involve the accused no.1, according to Shri Mangukiya, speaks volumes about his conduct. It is very likely that one Police Constable may have accepted the amount of Rs.200/- routinely offered by the rickshaw drivers/owners as instalment but

then that is not the case of the prosecution that the Police Constables of Talala Police Station are accepting the amount of bribe from each rickshaw driver/owner and as the complainant did not want to pay the same, he had decided to file the complaint in question. The case of the prosecution should be proved and brought before the Court and variation in the basic story and fibre should be viewed with doubt, is the accepted proposition of law. The prosecution cannot change the basic substance of the story. Here the case of the prosecution is that the accused no.1 is the person who had initially demanded the amount on 12th April, 1999. He is the person who had fixed the date of payment i.e. next day of the incident i.e. 13th April, 1999. The mode of payment is also decided by the accused no.1. According to the accused no.1, he himself was to accept the amount if he would be available at Talala. It is not the case of the prosecution that the complainant or any Member of the raiding party had ever attempted to ascertain whether the accused no.1 was present at Talala or not. In such a situation, the

theory placed by the prosecution and the acceptance of the amount was in lieu of the demand made on 12th April, 1999, whether should be believed or not, is the question posed before the Court. According to Shri Mangukiya, learned counsel appearing for the accused persons, the complainant is the key witness in such cases and when the conversation of the complainant is found unreliable qua the initial demand of amount of bribe and suffers from basic infirmities while narrating the incident of acceptance of bribe amount, then the prosecution case is required to be discarded.

12. The other point advanced by Shri Mangukiya, learned counsel appearing for the accused persons, is that the complainant had good experience so he was able to cook up a case against the accused no.1 through any Police Constable serving with the Talala Police Station. He had kept ways open. Initially, he had gone to Junagadh, so it can reasonably be believed that he might have been informed that the charge is with ACB Police Inspector,

Amreli. So it was not impossible for him to go to Amreli. However, he had reached to Rajkot. The complaint has been recorded, as per the case of the prosecution, at Rajkot at 09-00 p.m. by one Shri Mahida, Police Inspector, ACB Police Station on 12th April, 1999. On plain reading of the deposition of the complainant and the panch no.1, it appears that there are material contradictions as to the actual time of recording of first part of panchnama. Of course, there is confusion being two persons having similar type of names, but it is very clear that the panch no.1 was 'Hasmukhbhai' and one of the Members of the raiding party was 'Harsukhbhai'. The panch no.1-Hasmukhbhai had not followed the complainant as shadow though he was asked to be there in the company of the complainant and at the time of actual alleged conversation between the accused no.2 and the complainant, the panch no.1 was not so close to the complainant that he can hear the actual demand made at the spot. The complainant obviously was a trap witness and a person highly interested in the result and the success of the trap and so also in the

favourable result for prosecution at the conclusion of the trial. So as per the settled legal position, the evidence of the complainant is required to be scrutinised closely and for want of satisfactory corroboration of independent nature, it would not be safe to accept the bare words of the complainant that the accused no.2 demanded the bribe money. In an ACB case, if the demand is made by expressing words, then such conversation in most of the cases is over in couple of minutes. If the demand is made by gestures, it may take a couple of seconds. It is true that corroboration to the evidence of the complainant from any of the independent panchas, may not be parrotlike repetition of words but in sum and substance, and there may be sufficient corroboration of convincing nature. Shri Mangukiya, learned counsel appearing for the accused persons, has drawn the attention of this Court to the material contradictions and improvements made by the complainant as well as panch witnesses. When it is the say of the complainant that the person who accepted the bribe money was in

private clothes and had put on T-shirt and pant and had pocketed the bribe money in his pant pocket, the panch no.1 in his statement recorded by Police Inspector, Amreli, has stated that one Police Constable in uniform had blown whistle, and therefore, he (panch no.1) and the complainant had proceeded towards the said Police Constable and at that time, the said uniformed Police Constable was addressed as “Giribapu”. The panch no.1 was not knowing the name of the said Police Constable till that time, is one of the aspects emerging from the plain reading of the evidence of these two witnesses i.e. the complainant and panch no.1. It is the say of the panch no.1-Hasmukh that he came to know about the name of the accused no.2 at the time when second part of the panchnama was drawn. Of course, he has denied the suggestion that the Police personnel who was addressed as “Giribapu” was in uniform but when this contradiction is proved successfully by the defence-side, and that circumstance has also emerged during the examination of Police Inspector Navle Ex.50 when this witness was

answering a question asked by the Court, it would be risky for the Court to link the accused with the crime, especially when it is alleged that Shri Mahida had substituted the accused no.2. The statement of Shri Mahida was also recorded. But as his evidence is not available on record, non-examination of this witness Shri Mahida in this particular fact situation has resulted into serious prejudice to the defence, especially accused no.2. It is also in evidence of the Police Inspector Shri Navle that the statements of the Members of the raiding party were recorded and when the defence-side was able to bring a circumstance on record that a uniformed Police Constable had called the complainant by blowing whistle; and the complainant and the panch no.1 had proceeded towards the said Police Constable, then why the other Members of the raiding party could not be examined. In absence of evidence of Shri Mahida, anything that has come on record during the deposition of panch no.2 or Police Inspector Shri Navle would not be admissible in evidence. The statements of independent persons like Daneshbhai Rupareliya

(Neighbour) and Vitthalbhai Makwana, employee of Pathikashram where the second part of panchnama was drawn, were recorded. It is rightly argued by Shri Mangukiya that at least one of the persons from the raiding party could be examined if the prosecuting agency is in a mood to drop the important witness. In the fact finding mission, the Court could have called one of the Members of the raiding party or the said Shri Dhanesh Rupareliya or Shri Vitthalbhai Makwana; otherwise the shadow of doubt pointed out by the defence-side in respect of substitution of Police Constable would come in the way of the nature of clarity required to bring home the charge beyond reasonable doubt. The Court cannot ignore the wrong explanation given by the accused no.2. The prosecution has examined both the panchas and it is difficult for the Court to accept the say of any of these two witnesses as independent piece of evidence that the accused no.2 had called the complainant by blowing whistle and the amount of bribe was placed in the pant pocket by him as alleged by the prosecution, on account of

material contradiction which has come on record and which has been discussed by me in the foregoing paragraphs.

13. When it is in evidence that the Members of the raiding party and the panch no.2 were in the close vicinity of the area and it was an open public place popularly known as 'chowk', the panch no.2 has kept himself away from the vicinity of the area where the bribe amount was allegedly collected or received by the accused no.2, otherwise the panch no.2 could have said that he himself had heard the whistle blow and had seen the complainant as well as panch no.1 proceeding towards the Police Constable and had even seen giving of bribe amount by the complainant to the said Police Constable. It is not the say of the panch no.2 that he was standing away and, therefore, it was not possible for him to visualise the body movement of the complainant and the accused no.2. It appears that the confusion as to the description of the accused no.2 has compelled both the witnesses to make modulation while deposing before the Court.

14. I have carefully read the evidence of both the panchas and Police Inspector Shri Navle, including the questions asked by the Court. This Court is also able to visualise the atmosphere which might have been created during the deposition of the panch no.1. It is likely that the panch no.1 may not be answering the questions as desired by the learned counsel asking the questions. He may take some time which can be said to be more than reasonable and it would be too much for the learned Presiding Judge of the concerned Court. Excepting that the questions asked by the Court should be responded immediately and witnesses have no liberty to wait even for some seconds or minutes, it is presumed that the witnesses entering into the witness-box are the helping hands to the Courts in finding out the truth. If need be, then only they should be handled strictly. They can be served with the notice of perjury, if at the conclusion of the trial, the Court is able to reach to a conclusion that the particular witness is a liar and has suppressed the truth

deliberately, but the practice of hackling the witnesses has been deprecated by the Courts. This Court is inclined to make this comment after reading relevant part of the evidence of panch no.1-Hasmukh at Ex.26, especially paragraph nos.4, 5 and 6. The panch no.1 has been treated hostile by the prosecution and surprisingly, the questions were immediately asked by the learned Presiding Judge of the Court and not by the Public Prosecutor. It appears that the learned Public Prosecutor probably was not accorded the opportunity to cross-examine the panch witness for which the learned Public Prosecutor had sought for permission. Only one question was asked by the learned Public Prosecutor wherein the panch no.1 has replied that he had signed the panchnama without reading the same and he did not know what was written in it. After completion of the cross-examination of this witness, the Court had asked one question in the last paragraph as to who is his Appointing Authority and in response thereof, the panch no.1 had replied that Municipal Commissioner, Rajkot, is his Appointing Authority. Such

questions in number of cases would take an unhealthy current to the witnesses who might be waiting for their examination in the same case. The witness is to be evaluated on the strength of the evidence and if he is found condemnable or needs to be criticised severely, then on the strength of the totality of the evidence, the Court can do it and should do it. The fact remains that nothing fruitful can be said to have been achieved by the prosecution. The panch no.2 Ex.30-Kanakrai Shingala, has deposed that he and panch no.1 were called at 09-00 p.m. at the office of the ACB. So it can be said that perhaps while recording the complaint, the panchas may be present there. The complainant had reached Rajkot between 06-30 p.m. and 07-00 p.m., and to the ACB office at Rajkot at about 07-00 p.m.; and thereafter, his meeting fixed with Police Inspector Shri Mahida through one Police Constable Shri Kishorsinh. Shri Mahida took two to three hours in writing the complaint. According to the complainant, recording of the complaint was over by 09-00 p.m. to 09-30 p.m. So if the say of the panch

no.2 is accepted, it is possible to infer that before completion of recording of the complaint, the arrangement to call panchas must have been made by Police Inspector Shri Mahida. The brief facts of the complaint have been stated by this witness panch no.2 in paragraph no.1 of his deposition, and he has stated that they were asked to come again at 04-00 a.m. in the ACB office on the next day and formalities of applying anthracene powder were made in the ACB office in the morning and the amount of Rs.200/- was tendered by the complainant. On the other hand, the say of the complainant is that while recording the complaint, Shri Mahida had received an amount of Rs.200/- from him and the entire formality of applying anthracene powder was made by Shri Mahida and the muddamal currency notes were put in the pocket of the complainant by Police Inspector Shri Mahida and necessary instructions were also given. In the cross-examination, this witness has specifically stated that the amount of Rs.200/- was handed over after writing of the complaint and the application of the anthracene powder was over

within 10 to 15 minutes and the muddamal currency notes were kept in the pocket of the complainant. When everything was over, it was 12-00 midnight, and he had slept in one of the rooms in the said ACB office and in the adjoining room, other police personnel Shri Kishorsinh, Shri Pande, Shri Mahida, etc. were there and two persons who were called as panchas were also asked to sleep there. All of them had waken up at 05-00 a.m. on 13th April, 1999 and the currency notes all through out the night were there in the pocket of the complainant. So the evidence of the panch no.2 runs contrary to the version of the complainant, and on plain reading of the panchnama, it is difficult for this Court to conclude that panch no.2 gets sufficient corroboration from the panchnama. Even it is not possible for this Court to say that the first or second part of panchnama can be said to have been satisfactorily proved by the panch no.2. The evidence of panch no.2 was important in the background of one fact that the panch no.1 was treated hostile by the prosecution.

15. It is settled that when the first part of panchnama has not been proved satisfactorily and it is found under great shadow of doubt, the second part of panchnama should not be accepted as a trustworthy piece of evidence. If the muddamal currency notes had remained with the complainant all through out the the night on 12th April, 1999 in his pocket as stated by him, why the version of the panch no.1 or panch no.2 should be accepted that the formalities mentioned in the first part of panchnama were done in the early morning on 13th April, 1999. For the sake of argument, if it is accepted that the Court ignores the evidence of the complainant qua the first part of panchnama, whether the evidence of panch no.1 is found reliable qua the first part of panchnama, is also a question which needs consideration. It is settled that ignoring the evidence of the complainant, if the Court is satisfied on the strength of the evidence of the panchas, then the accused can be linked with the crime, but as observed earlier the panch no.1 has turned hostile and something

which has come on record in favour of the prosecution must have come on record under avoidable contingencies. It is mentioned earlier in brief but when the Court is satisfied that the panch no.1 must not have deposed without fear or pressure from all corners. So it is not safe for this Court to accept the say of Shri A.J. Desai, learned Additional Public Prosecutor, that part of evidence of panch no.1 should be relied on. The Court is not in agreement with the say of Shri A.J. Desai, learned Additional Public Prosecutor, that the version of panch no.2 should be accepted as reliable because this witness has attempted to put curtain on various aspects and some improvements on material points and contradictions of substantive nature made by panch no.2 in his deposition Ex.26 is not found helpful to the prosecution.

16. The accused no.1 was not present at the spot in question. He was not caught and it is not even mentioned whether he had returned to the Police Station till the completion of the

second part of panchnama or not. The learned trial Judge has not considered the documentary evidence showing the presence of the accused no.1 elsewhere and that too on duty. It is not possible for this Court to accept the say of Shri A.J. Desai, learned Additional Public Prosecutor, that the accused no.1 would have returned to Talala Police Station again after instituting NC cases against more than one rickshaw drivers/owners any time between 09-00 a.m. and 12-00 p.m. The raid carried out by the accused no.1 in a prohibition case was at one village Bhalcchel and that village is not very far from Talala. But if the time of the prohibition raid carried out by the accused no.1 is considered qua the event allegedly occurred on 12th April, 1999, it is not possible to accept the say of prosecution that the complainant was beaten and threatened by the accused no.1 for not paying the monthly instalment of Rs.200/- towards the bribery for plying his goods carrier rickshaw as a passenger transport vehicle any time between 12-00 p.m. and 12-30 p.m. on 12th April, 1999 because the accused no.1 had raided one placed

at village Bhalcchel. According to the extract of Police Station diary (Ex.40), the raid was carried out at 12-45 p.m. and the accused Dafer Sultan alias Kuka Aali Suleman was arrested. In the very village one Koli Raju Mohan was arrested in the raid between 09-45 and 12-00 p.m. and the offence against Raju Mohan Koli was registered and relevant entry was made at Sr.No.17 in the Police Station Diary at 14-05 hrs. The accused no.1 was not aware that at the instance of the complainant, the ACB Police Station, Rajkot is going to lay down a trap on the next date i.e. on 13th April, 1999. So the entries which are reflected in the Police Station Diary of Talala Police Station dated 12th April, 1999 should not be viewed with any doubt.

17. One of the submissions advanced on behalf of the accused no.1 by Shri Mangukiya is that he had started handling the issue of transporting passengers in a goods carrier rickshaw with stern action against the number of drivers and/or such owners of the rickshaw instituting criminal cases against them since the

beginning of April, 1999, he has been falsely implicated. It is submitted by Shri Mangukiya, learned counsel appearing for the accused, that the complainant was the leader and was enjoying the status of President of so-called association of the rickshaw drivers. Therefore, he has created the story and cooked up prosecution against the accused no.1. As the entire story of demand has been cooked up, the complainant could not even implicate the particular Police Constable and, therefore, according to Shri Mangukiya, the prosecution witnesses have fumbled in even identifying the accused no.2. It is rightly submitted that the prosecution was confused whether the accused no.2 had allegedly accepted the amount or some other person namely “Bapu” or “Darbar” had accepted the same. Whether the person who accepted the amount had put on T-Shirt as described in the panchnama or was a uniformed Police Constable? It is also not clear whether two Police Constables were there or there was only one Police Constable ? Whether the Police Constable who had blown the whistle was the person different then who accepted the

amount?, are the questions which are emerging from the evidence. If the person who has accepted the amount was the very person who had called the complainant by blowing the whistle so that the attention of the complainant can be drawn and by calling the complainant nearer to him, he can demand the bribe and accept the same. The crucial question which is not answered either by the complainant or by any of the panchas, is as to what has happened to the whistle which obviously should be there with the Police Constable? There is no reference in the evidence of any the important prosecution witnesses and when nobody from the raiding party, including Shri Mahida, could be examined by the prosecution, it is not possible for this Court to make any comment in reference to this lacuna when the Court is evaluating legality and validity of the judgment and order of conviction and sentence. Normally the police whistles are in an iron ring and this iron wring is normally found knitted with lanyard. In the muddamal these articles are not found. So the suspicion of

let going the person who had actually accepted the amount i.e. uniformed Police Constable gets magnified. The learned trial Judge while evaluating the evidence has not taken care of scanning the evidence closely. Which exercise can be said to be the exercise of close scanning of the evidence, is the crucial question. It is just similar dissection of each word and sentence uttered by the witnesses or any writing found in any document tendered in evidence, which can be termed as a proved document. Cross-checking and cross-matching are also required to be made simultaneously. Improvements made by a witness including the modulations if are found and the omissions in the nature of contradictions if are available on record, then all such aspects should be applied simultaneously while treating a witness either useful to the prosecution or not useful to the prosecution. Falsity in the defence may be a circumstance against the accused but the weakness of the defence-side automatically would not add any strength to the case of the prosecution, are the criteria and it appears that the learned

trial Judge has not taken into consideration these aspects.

18. In an ACB case the evidence of complainant is crucial. If the complainant is not available or prosecution is not able to examine him, then the evidence of panch witness who is the active participant can help the prosecution. The panch witness is not a trap witness. In the present case, there is no serious impeachment about selection of the panch and this independent person has not supported the case then who has proved the second part of panchnama beyond reasonable doubt and in a convincing manner, is the question which is required to be replied and it appears that the same has not been replied satisfactorily by the learned trial Judge.

19. The question prosed by the defence-side on the strength of the lacunas pointed out during the course of arguments has to be addressed by cogent and reasoned conclusions, only then it can be said that a person accused is delivered justice with satisfaction of redressal even

qua the complainant/ prosecution. The duty of the Court is to strike balance between the complainant and the accused. It is true that our country is suffering because of rampant corruption and criminal misconducts of the public servants and such accused should not be permitted to come out of the serious charge of the offence punishable under the provisions of the Prevention of Corruption Act on any unconvincing and/or illogical finding. In the present case, in true sense, in absence of evidence of Shri Mahida or any member of the raiding party, the learned trial Judge ought not to have held the accused persons guilty on the infirm or weak piece of evidence. It is true that the accused themselves could have examined the members of the raiding party from the ACB office at Rajkot as defence witnesses, but in an ACB case such an expectation is unwarranted. On the contrary, in the present case, it is possible to argue for the defence side that no member of the raiding party has been examined, so that the description of the Police Constable who had blown whistle and/or had accepted the amount of bribe, does not

come on record. After accepting the amount, where the bribe amount was kept for the first time, has also not come on record on account of grave error committed by the complainant. Of course, a witness can correct himself but the question would be that why and in which circumstance, this error would crop up, is a question. When the person accepting the bribe amount has never even attempted to put the bribe amount in the pocket of his T-Shirt put on by him, no such mistake could have cropped up. So during the course of alleged conversation and transfer of the bribe money from the complainant to the Police Constable, who had accepted the bribe amount, he must have seen and experienced the gesture of putting the amount in the front pocket of the shirt or T-Shirt put on by the said Police Constable. In this fact situation, there is scope for the defence side to argue and request the Court to infer that this mistake has been cropped up only because the person who has accepted the muddamal currency notes may not be the same person who ultimately came to be prosecuted. When the material contents

of the panchnama Ex.28 are not found proved to the satisfaction of the Court by any of these panchas on overall appreciation of the evidence, the judgment and order of conviction and sentence cannot sustain. When the complainant was out to implicate the accused no.1, then he might have agreed to any substitution of accused no.2 and, therefore only, he could not have resisted in substituting the accused no.2 i.e. a uniformed Police Constable having no lanyard or police whistle against the uniformed Police Constable normally who is supposed to carry such whistle. It is rightly argued by Shri Mangukiya, learned counsel appearing for the accused, that the intention of the complainant in the present case was not to curb corruption or to see that a corrupt officer is convicted, but the idea of the complainant was that any how the accused no.1 is trapped and is made accused of such a serious offence. At this point of time, the act of filing such or similar complaint against other public servants by the two real brothers of the complainant being relevant, cannot be ignored.

The document shows that the Talala Police Station is a Taluka Police Station. Talala is a small town and rickshaw stand must not be very crowded area, so that it can disturb the police in drawing the panchnama on the spot. The ACB Police Inspector Shri Mahida could have made necessary arrangement so that the second part of panchnama can be drawn on the spot. The explanation given by the prosecution for not drawing the panchnama on the spot and taking the entire raiding party along with the accused no.2 to the District Panchayat Guest House is not found convincing. Suppose any grave offence against body would have been committed at that very spot from where the accused no.2 was allegedly caught accepting the muddamal currency notes as bribe amount, whether panchnama at the place other than the spot could have been drawn or not ? In extraordinary circumstances, the Police is supposed to make necessary arrangements. According to me, when the chowkidar of the District Panchayat Guest House has not been examined and when there is no evidence of the persons of the neighbouring area whose

statements were allegedly recorded by the Investigating Officer where the raid was actually carried out, it makes the shadow of doubt thicker, especially when the evidence of the complainant is infirm and panch no.1 has not supported the case of the prosecution.

20. It is settled legal position that in the ACB cases, the prosecution is supposed to prove beyond reasonable doubt (I) demand, (ii) acceptance of bribe amount, and (iii) acceptance must be with some agreement and/or understanding. In the present case, over and above the aforesaid three aspect, the prosecution was supposed to establish the aspect that the amount was accepted by the accused no.2 on behalf of accused no.1. If the first three ingredients would have been proved beyond reasonable doubt then the presumption could have been drawn against the accused no.2 and on proving the fourth ingredient, the prosecution could have argued that the accused no.1 was brought under the net of presumption. When the complainant has posed himself as a regular bribe giver to the Traffic Police

Constables and it is not his say that he had ever given such an amount to the accused no.1 or his predecessor, it is not possible for this Court to uphold the finding of conviction and sentence.

21. Shri Mangukiya has cited certain decisions in support of his submissions. The decision in the case of ***Ganga Kumar Srivastava v. State of Bihar, reported in 2005(6) SCC 211***, the Apex Court has discussed the settled the ratio. The Apex Court has observed that the Court need not depend on oral evidence which was something of a dubious character to decide the fate of accused public servant. In this cited decision, the Apex Court has turned down two concurrent findings of conviction and sentence holding them as “not sustainable”. In this decision, the trapping officer had treated the muddamal currency notes with phenolphthalein powder but the complainant had emerged as a person involved in the theft of electricity. I have considered the tone of the finding of the Apex Court while evaluating the evidence of

the complainant and treating his evidence as weak piece of evidence.

22. The another decision relied upon by Shri Mangukiya is in the case of ***Gulam Mahmood A. Malek v. State of Gujarat, reported in 21 GLR 965***, whereby the Apex Court has observed that the background of the case should not be lost sight of in appreciating the evidence. In the present case, the learned trial Judge has not considered the background of the case at all.

23. One more decision is cited by Shri Mangukiya, which is in the case of ***Khilli Ram v. State of Rajasthan, reported in 1985 (1) SCC 28***, whereby the Apex Court has acquitted the accused who had allegedly accepted the bribe amount while in uniform near a crowded bus-stand though the Police Station was near to the spot. The Apex Court has also observed that the phenolphthalein powder treatment to the currency notes used for trap should have been resorted to. But in the present case, there was no argument qua the use of type of

powder advanced on behalf of the accused. It is true that in a bribery case, the Court should, while analysing the proof given by the prosecution, keep in mind “the preponderance of probabilities and normal human behaviour” as observed by the Apex Court in the case of ***Tej Bahadur Singh v. State of U.P., reported in 1990 (Supp.)SCC 125.*** Of course, the facts in this cited decision are substantially different. So it is not necessary to discuss the ratio of the cited decision.

24. Some of the decisions cited by Shri B.M. Mangukiya, learned counsel appearing for the accused, are of the cases where the Apex Court was dealing with the appeal against the judgment and order of conviction and sentence and reappraisal of the evidence while exercising powers vested with the Court under Section 378 read with Section 386 of the Code of Criminal Procedure, 1973. In the present case, the Court is concerned with the powers vested under Section 374 read with Section 386 of the Code of Criminal Procedure, 1973. This

Court has all the powers of re-appreciation of evidence and while evaluating the evidence, the Court can even re-write the judgment, if required, instead of mere evaluation qua the strength of the conviction recorded by the learned trial Judge. Keeping the scheme of Section 374 read with Section 386 of the Code of Criminal Procedure, 1973, in mind, the Court has evaluated the arguments advanced by the learned counsel appearing for the appearing for both the sides. So the decisions cited by Shri Mangukiya on these aspects are not required to be discussed. For short, the submissions made by Shri Mangukiya, learned counsel appearing for the accused persons of both the appeals, are found acceptable and it is not possible for this Court to agree with the submissions made by Shri A.J. Desai, learned Additional Public Prosecutor, whereby he has stated that there is no grave error in appreciation of the evidence and there is no need to interfere with the finding of conviction and sentence.

25. In view of above observations and discussion,

the present appeals are hereby allowed. The judgment and order of conviction and sentence under challenge in these appeals dated 17th December, 2004, passed by the learned Special Judge and Additional Sessions Judge, 5th Fast Track Court, Veraval, in Special ACB Case No.01 of 2001, is hereby set aside. The appellants-orig.accused of both the appeals are hereby ordered to be acquitted from all the charges levelled against them in respect of the offence in question. The bail bond executed by each appellant shall stand discharged. The amount of fine, if any paid, shall be refunded to the respective appellant on proper identification.

26. Before parting with the present judgment, the Court is inclined to observe one aspect being relevant that the old appeals against the judgment and order conviction and sentence are pending. The crucial question would be as to why the appeals preferred in the year 2004 have been given priority and out of turn hearing. The Court was not inclined to give priority to the hearing of the present appeals

and therefore, Shri B.M. Mangukiya, learned counsel appearing for the appellants, had moved this Court with an application for expeditious hearing and had attempted to convince the Court to hear the matter by giving out of turn priority to these matters. For the sake of brevity and convience, I would like to reproduce the relevant part of the order dated 24th November, 2006, passed by this Court in Criminal Misc. Application No.3758 of 2006, which is as under :

> “...Undisputedly, this Court has suspended the conviction pending hearing and final disposal of the appeal and obviously the applicant is on bail. However, the order passed by this Court in Special Civil Application No.1359 of 2005 on 19th December, 2005 (Coram : Honourable Ms.Justice R.M.Doshit) and the order passed by the Division Bench in Intra Court Appeal being Letters Patent Appeal No.447 of 2006 dated 31st March, 2006, the

applicant is found justifying praying for expeditious hearing of the appeal. Learned A.P.P., also states that the State has no objection if the matter is taken up as priority matter because the paper-book is already supplied. Considering the pendency of old matters and one part heard matter, it would be proper to list this matter in final hearing Board on 6/12/2006. Application stands allowed and disposed of accordingly."

27. The order dated 19th September, 2005, passed by the learned Single Judge in Special Civil Application No.1359 of 2005, was challenged by way of Letters Patent Appeal. In rare cases the Courts are suspending the judgment and order of conviction and sentence; but after hearing the advocate for the appellants-orig.accused, the judgment and order of conviction and sentence was suspended after admitting the appeals. I would like to reproduce one of the said orders dated 21st

December, 2004 passed by this Court (Coram : D.N. Patel, J) in Criminal Misc. Application No.11831 of 2004 in Criminal Appeal No.2199 of 2004, which is as under :

> "1. Rule. Mr. K.P. Raval, learned A.P.P. Waives service of Rule on behalf of the respondent – State.
>
> 2. Heard the learned advocate for the applicant and the learned A.P.P. for the State.
>
> 3. Looking to the facts and circumstances of the case and depositions of the witnesses and evidence on record, the sentence awarded to the present applicant by the Special Judge (ACB), Fast Track Court No.5, Veraval in Special Case (ACB) No. 1 of 2001 vide judgment and order dated 18-12-2004, is hereby suspended till final decision of Criminal Appeal No.2197 of 2004 preferred by the present applicant.

The applicant is released on the same bail and with fresh bond before the trial Court. Accordingly, this application is allowed. Rule is made absolute to the aforesaid extent."

28. So keeping in mind, the aforesaid order dated 21st December, 2004 passed by this Court (Coram: D.N.Patel, J) while dealing with Criminal Misc. Application No.11831 of 2004 in Criminal Appeal No.2199 of 2004 as well as the order dated 21st December, 2004, passed by this Court (Coram : D.N.Patel, J) while dealing with Criminal Misc. Application No.11826 of 2004 in Criminal Appeal No.2197 of 2004, both the present appeals were heard together being the appeals arising out of the same judgment and order of conviction and sentence and have been decided expeditiously.

(C.K. Buch, J)

Aakar